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1) Appeal Brief (10 pages)

Inventor(s): Tack et al.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/831,004
Applicant(s) : Joris Jozef Gustaaf Tack, et al.
Filed : May 3, 2001
Titled : A Container
TC/A.U. : 3727
Examiner : Lien M. Ngo
Confirmation No. : 8972
Docket No. : CM1930
Customer No. : 27752

APPEAL BRIEF

Mail Stop Appeal Briefs - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office Final Office Action dated June 9, 2004. A timely notice of Appeal was filed on September 9, 2004.

REAL PARTY IN INTEREST

The real party in interest is the Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 – 15 are pending and stand rejected. Claims 1 – 15 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the appealed from Final Action of June 9, 2004.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 relates to a container for wetted wipes. (Page 4, lines 25 – 27; Fig. 1, Item 1).

The container has a container body (Page 4, line 25; Fig 1, Item 11), a stationary cover (Page 4, line 29; Fig. 1, Item 12), at least one dispensing opening in the stationary cover (Page 7, lines 20 – 21; Fig 1, Item 23), a moveable lid (Page 4, line 30; Fig 1, Item 13), and a gas-proof means (Page 5, line 3; Fig. 1, Item 16) located between the stationary cover and the moveable lid.

Use of the word “means” triggers a presumption of the application of 35 U.S.C. § 112(6). The gas-proof means, however, is claimed as a structural component of the container created by a gasket seal (Page 14, lines 24 – 26) positioned around the entirety of the dispensing opening (Page 14, lines 26 – 27). It is used to reduce the amount of vapor transmission (Page 14, lines 9 – 11). Disclosed methods of forming the gasket seal include curing a liquid component into the groove of the stationary lid (Page 15, lines 6 – 8) and by fitting a preformed, solid component into the groove (Page 16, lines 6 – 7). Therefore, although the word “means” is utilized in the naming of the component, sufficient structure is recited in the claim to remove the application of 35 U.S.C. § 112(6).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

I. Claims 1 – 5, 7 – 13, and 15 stand rejected as obvious under 35 U.S.C. § 103 over Ishikawa et al. (US Patent No. 5,699, 912) in view of Urano et al. (US Patent No. 4,208,118).

II. Claim 6 stands rejected as obvious under 35 U.S.C. § 103 over Ishikawa in view of Urano in further view of Tagucki et al. (US Patent No. 4,513,877).

III. Claim 14 stands rejected as obvious under 35 U.S.C. § 103 over Ishikawa in view of Urano in further view of Boedecker et al. (US Patent No. 3,994,441) or Kanfer et al. (US Patent No. 5,573,132).

ARGUMENT

CLAIMS 1 – 5, 7 – 13, AND 15 ARE NOT PROPERLY REJECTED AS OBVIOUS UNDER 35 U.S.C. § 103 OVER ISHIKAWA et al. (US PATENT NO. 5,699,912) IN VIEW OF URANO et al. (US PATENT NO. 4,208,118).

The final office action does not make out a proper § 103 rejection of Claims 1 – 5, 7 – 13, and 15 over Ishikawa in view of Urano because there is no demonstrated motivation to combine the two patents. As such, the Final Action has failed to establish a *prima facie* case of obviousness.

The Appellants are in agreement with the Examiner's position articulated in the Final Office Action with respect to the scope and content of the prior art and the differences between the claimed invention and the prior art. Namely, Appellants concede that the Ishikawa patent does indeed disclose a container for wetted wipes. Appellants also agree with the Examiner that the difference between this cited prior art and the claimed invention is that the Ishikawa patent does not disclose the use of a gasket seal fitted into a groove. With regard to the Urano patent, Appellants are in agreement with the Examiner that the Urano patent does disclose a gasket seal located between a cover and a moveable lid. The Urano patent, however, is directed to a camera and not a container for wetted wipes (or any other wet article). Appellants do not agree that a sufficient motivation to combine the Urano and Ishikawa references has been shown in the Final Action.

In order to establish a *prima facie* case of obviousness, the Office Action must show a motivation to combine and modify the references in the manner claimed and a reasonable expectation of success resulting from the combination and modification. This suggestion of the desirability of the combination and modification must come from the teachings of the prior art itself and not from the Appellants' own disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the instant case, the reasoning supposedly supporting the *prima facie* case of obviousness is found on pages 2 – 3 of the Final Office Action:

It is well known in the art to provide a gasket seal fitted into a groove where an edge of lid closes a receptacle opening for enhancing the sealing between the lid and the receptacle. For example, Urano et al. discloses, in figs 7 and 8, a gasket seal 2 being located between a cover and a movable lid, wherein the gasket seal fitted into a groove on the cover. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Ishikawa et al container with a gasket seal positioned fitted into the groove, in view teaching of Urano, in order to enhance the sealing between the lid and the receptacle.

The Final Office Action reasons that a motivation to combine the references comes from a desire “to enhance the sealing between the lid and the receptacle.” (Page 3). This reasoning, however, is assuming what the Final Action must show in the first instance. Ishikawa discloses the use of an annular wall sealing. The Final Action is assuming the existence of a need to change the annular wall sealing with an alternative structure such as a gasket seal. The Final Action has not shown why an alternative seal would be desired much less that one of ordinary skill in the art would look to the teachings of the gasket seal disclosed in Urano.

The Final Action asserts that “it is well known in the art to provide a gasket seal fitted into a groove where an edge of lid closes a receptacle opening for enhancing the sealing between the lid and the receptacle.” The Examiner, however, has not identified the pertinent art area at all. The Examiner is making an implicit finding that the “art” area is anytime a lid engages an opening. This is simply too broad of an art area. Neither reference alone, or in combination, supports the conclusion put forth by the Examiner. The statement by the Examiner suggests that any time a lid closes a receptacle, one of ordinary skill in the art would recognize the desirability of inserting a gasket to enhance sealing. First, a gas-proof gasket fitted around the entire perimeter must be suggested but there is no hint as to why. The Examiner has not made a supported showing of how Urano is pertinent to one of ordinary skill in the art who is looking to improve a container for wet wipes. The Final Action is looking to a very different structure to support a very broad conclusion. But this begs the question of whether there is a desire to enhance sealing in all structures where a lid closes an opening. The reasoning quoted above in the Final Action seems to suggest such a finding.

The Final Action does not provide a showing of motivation for why these references should be combined nor of how these references should be combined for a *prima facie* case. The

Final Action is simply assuming that the motivation is that better sealing is desired. There are no grounds of support for this assumption provided in the Final Action. As for 'how' to combine, one would need a reasonable expectation of success at least. But there is no showing that Urano demonstrates a seal that can reasonably be expected to achieve the desired result in the container of Ishikawa.

The rejection of these claims is not proper as the gasket seal provided for in the instant case is directed to a purpose different from the gasket seal provided for in Urano thus the Examiner has not provided evidence of a reasonable expectation of success in placing the Urano gasket seal on the Ishikawa container. The Urano reference is concerned with a moisture and dust proof sealing arrangement in a camera and utilizes a continuous viscoelastic sealing gasket bonded onto the loop surfaces of the rear cover of a camera. (Col. 2, lines 6 – 8). Urano discloses the use of the gasket seal to "prevent the entry of moisture or dust into the camera." (Col. 2, lines 10 – 11). In the instant case, the gasket seal is provided to prevent the wipes from drying out (Page 13, line 32, Page 14, line 1). "The vapor transmission between the two [the container body and the stationary cover] is decreased to a value sufficiently low to prevent evaporation of the lotion volatile components." (Page 14, lines 10 – 11). Thus, the gasket of Urano is composed of a liquid and particle impervious material which may still allow gas vapors to pass through while the gasket of the instant case is composed of a gas impervious material. The two gaskets, therefore, are directed towards differing uses. There is no evidence that the gasket seal of Urano is suitable to work on the container of Ishikawa. The Urano gasket does not want to let solids and liquids into the interior of the camera and the current gasket does not want to let vapors escape from the tub container.

The rejection of these claims is not proper as the Urano reference cited by the Examiner is not analogous art with respect to Ishikawa. The current case is directed towards improving the characteristics of a container for wet wipes. One of ordinary skill in the art would not have logically searched the prior art in the field of photography. Thus the gasket from the camera would not have logically come to the attention of one of ordinary skill in the art who is concerned with solving a particular problem in a wet wipe container.

The Final Action continually states that a gasket is an obvious addition to a wet wipe container. The Final Action, however, had to look to a far remote field away from containers for disposable consumer products in order to find a reference which might come close to the claimed

gas proof means. "A reference is not available under 35 U.S.C. § 103 if it is not within the field of the inventor's endeavor and was not directly pertinent to the particular problem with which the inventor was involved." King Instrument Corp. v. Otari Corp., 767 F.2d 853, 226 U.S.P.Q. 402 (Fed. Cir. 1985). The appropriate field of endeavor is determined "by reference to explanations of the invention's subject matter in the patent application, including the embodiments, function, and structure of the claimed invention. In re Bigio, 2004 U.S. App. LEXIS 17981, at *9 (Fed. Cir. Aug. 24, 2004). The PTO must provide substantial evidence to support a factual assessment of the field of endeavor. Id. at *11. The assessment for field of endeavor cannot be entirely subjective. Id. at *11. The "reality of the circumstances" must be considered when determining which fields a person of ordinary skill in the art would reasonably be expected to search when looking for a solution to a problem. Id. at *12. In this situation, the Urano reference does not fall within the field of the Applicants' endeavor. One of ordinary skill in the art who was looking to improve a wet wipe container would not reasonably look to a camera in order to make that improvement. Even if one of ordinary skill in the art would look to the gasket seal as disclosed in Urano, that gasket seal is teaching how to keep water and dust out of the camera and not teaching how to keep gas vapors in. Thus, the gasket as found in Urano is not directly pertinent to the gasket seal in the instant case.

CLAIM 6 STANDS REJECTED AS OBVIOUS UNDER 35 U.S.C. § 103 OVER ISHIKAWA IN VIEW OF URANO AND FURTHER IN VIEW OF TAGUCHI et al (US PATENT NO. 4,513,877).

In the Final Office Action, the Examiner rejected Claim 6 under 35 U.S.C. § 103 as obvious over Ishikawa in view of Urano and further in view of Taguchi et al. (US Patent No. 4,513,877). Contrary to the position in the Final Action, however, these rejections are improper and should be reversed.

Claim 6

The Taguchi patent discloses a hinge bias spring element. Claim 6 of the instant case is a dependent claim of Claim 1. As already noted, the rejection of Claim 1 is dependent on the combination of Ishikawa and Urano. For the reasons stated above, the rejection of Claim 1 on the combination of Ishikawa and Urano is improper. The addition of the Taguchi patent to the combination of Ishikawa and Urano does nothing to overcome the deficiencies discussed above with respect to the modification of Ishikawa by the addition of the gasket seal of Urano.

Therefore the rejection of Claim 6 should be reversed for at least all of the reasons the rejection of Claim 1 should be reversed.

CLAIM 14 STANDS REJECTED AS OBVIOUS UNDER 35 U.S.C. § 103 OVER ISHIKAWA IN VIEW OF URANO IN FURTHER VIEW OF BOEDECKER et al (US PATENT NO. 5,573,132) OR KANFER (US PATENT NO. 5,573,132).

In the Final Office Action, the Examiner rejected Claim 14 under 35 U.S.C. § 103 as obvious over Ishikawa in view of Urano and further in view of Boedecker et al. (US Patent No. 5,573,132) or Kanfer (US Patent No. 5,573,132). Contrary to the position in the Final Action, however, these rejections are improper and should be reversed.

Claim 14

Claim 14 of the instant case is a dependent claim of Claim 1. As already noted, the rejection of Claim 1 is dependent on the combination of Ishikawa and Urano. For the reasons stated above, the rejection of Claim 1 on the combination of Ishikawa and Urano is improper. The addition of the Boedecker or Kanfer patents to the combination of Ishikawa and Urano does nothing to overcome the deficiencies discussed above with respect to the modification of Ishikawa by the addition of the gasket seal of Urano.

Neither the Boedecker or the Kanfer patents provide a gasket seal. The Boedecker and Kanfer patents only provide for an opening the container bottom. The Final Action does not provide a showing of motivation for why these references should be combined with Ishikawa and Urano. Combining Boedecker or Kanfer with the previous combination of Ishikawa and Urano without a showing that the references as a whole would suggest such a combination is insufficient to establish that the claimed subject matter as a whole would be obvious. The Final Action is simply assuming that the motivation is that a bottom opening of the container is desired. There are no grounds of support for this assumption provided in the Final Action. Therefore the rejection of Claim 14 should be reversed.

SUMMARY

None of Claims 1 – 15 have been properly rejected under 35 U.S.C. § 103 in light of the reasoning and analysis given in the Final Office Action. In light of all of the analysis and discussion provided above, Appellants respectfully request the Honorable Board of Patent Appeals and Interferences to reverse the rejections of Claims 1 – 15 and to remand the application with instructions that these claims be allowed over the cited art.

Respectfully Submitted,
The Procter & Gamble Company

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Date: October 11, 2004

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CLAIMS APPENDIX

1. A container for wetted wipes, comprising a container body, a stationary cover being removably fitted on, or integrated to said container body, said stationary cover comprising at least one dispensing opening through which the container contents is removable, a movable lid which is movably attached to said stationary cover, so as to reversibly close said dispensing opening, the container further comprising a gas-proof means which is located between said stationary cover and said movable lid, for providing a gas-tight barrier between the inside and the outside of the container when the movable lid is in the closed position, wherein the gas proof means comprises a gasket seal.
2. A container according to claim 1, wherein a spring element is located between said stationary cover and said movable lid, and is charged with an elastic energy when the movable lid is in closed position.
3. A container according to claim 1, wherein a locking mechanism is located between the stationary cover and the movable lid for releasably securing the movable lid in the closed position onto the stationary cover.
4. A container according to claim 3, wherein the locking mechanism comprises a protrusion of the stationary cover which engages against a corresponding protrusion of the movable lid, and a push-button.
5. A container according to claim 1, wherein a pushbutton is an elastically deformable portion of the stationary cover, said push-button being located near enough to the protrusions of the stationary cover and the movable lid, to disengage said protrusion of the movable lid from said protrusion of the stationary cover when said pushbutton is pressed, thus releasing the movable lid into the open position.
6. A container according to claim 1, further comprising a spring element, wherein the spring element is a metallic single or multiple winding coil spring with elongated ends.
7. A container according to claim 1, further comprising a spring element, wherein the spring element is made out of a synthetic or natural rubber-like material.
8. A container according to claim 1, wherein the gas-proof means is a gasket seal which is located along the periphery of the dispensing opening.
9. A container according to claim 1, wherein the gasket seal is made out of a silicone elastomer.
10. A container according to claim 1, wherein the gasket seal is applied as one or several liquid components which are mixed and then cured in place.

11. A container according to claim 9, wherein the gasket seal is a preformed element fitted into a groove of the stationary cover.
12. A container according to claim 1, wherein the gasket seal is substantially compressed all along its periphery when the movable lid is in the closed position.
13. A container according to claim 1, wherein the stationary cover comprises ribs and grooves which fit into corresponding ribs and grooves of the container body, said stationary cover being adjustably attached to said container body so that the resulting assembling surfaces are edgeless.
14. A container according to claim 12, wherein the stationary cover is an integral part of the top side of the container body, the bottom side of the container body comprising a refill opening which is closed by a removable cover.
15. A container according to claim 1, which is to be used for disinfectant wipes which are folded for removal one by one from the container.